

**SOC 3395: Criminal Justice &**  
**Corrections**  
**Lecture 2: Overview of the Canadian Criminal**  
**Justice System 2**

\* Now that we have introduced criminal justice & the major institutions of the CJS, today we will review:

- (1) Processing cases through the CJS
- (2) The informal operation of the CJS
- (3) Values & the CJS

**Processing cases through the CJS:**

\* Criminal procedure is concerned with the way the CJS operates to bring offenders to justice while ensuring this is done fairly

\* *Pre-Trial procedure*: issues:

- law of arrest (with or without warrant). Key phrase: "reasonable & probable grounds")
- whether to issue appearance notices or summons instead (will the accused likely show in court? Commit another crime?)
- whether bail is to be granted to an arrested accused: onus is in police/ Crown to "show cause" why not
- fitness hearings: is the accused mentally competent to stand trial?

\* *Trial Procedure*: issues:

- first court appearance: arraignment of accused (charges read, plea entered)
- in “election” offences: accused has option of a preliminary inquiry to see if enough evidence exists to send case to trial (evidence examined, witnesses testify, etc.)
- trial: judge alone vs. judge & jury
- trial: issue now whether accused is proven “guilty beyond a reasonable doubt”
- if reasonable doubt exists, accused is acquitted
- if not, and accused found guilty, matter proceeds to sentencing

\* Sentencing:

- options include discharges (absolute & conditional), probation, incarceration, suspended sentences & fines
- within limits, these may be combined by the judge
- sentencing judges often rely on pre-sentence reports, submissions by counsel, the “range” set by the Criminal Code & case law, victim impact statements, aggravating/mitigating circumstances, & sentencing guidelines.
- if incarceration ordered, offender sent to federal or provincial facility (2 years is the dividing line)
- parole: offenders can obtain:
  - full parole at 1/3 point of sentence or 7 years (whichever is

- less)
- statutory release at 2/3 point
- rehabilitation/treatment programs during incarceration
- community supervision/ support upon release

### **The Informal Operation of the CJS:**

\* The “criminal justice funnel”:

- Many cases don’t enter system: offenders not reported, caught or charged
- only 10.1% of reported incidents resulted in convictions in 2003- 04 (and just 30% of these were sentenced to custody)
- Some cases don’t proceed : dropped charges/ lack of evidence
- Some cases lead to acquittals
- Those who go to jail/ exit funnel are thus relatively few

\* Key point: there are many points in CJS where decisions can be made/ discretion exercised to deal with case before reaching bottom of funnel

\* While formal law *officially* governs, there are many routine, informal “*screening* points” used to move a case along efficiently

\* The “courtroom work group” involves key players with shared values/ working relationships cooperating to meet mutual goals & “get things done”

\* Informal points of discretion:

- not all victims realize they have been victimized
- many that do don't report it (42% do according to 1993 GSS;  
33% under the 2004 GSS)
- reported crimes may not be followed up by police with charges  
(“unfounded” cases). Ericson (1982) found 52% of incidents  
founded
- arrests/prosecutions only occur in 27% of cases
- many eligible for bail don't receive it (despite legislation)
- review of charges by prosecutor result in many cases being  
dropped
- plea bargaining: dropping some charges in return for guilty plea  
on another
- sentencing: most accused plead guilty, but extralegal factors  
come into play such as race & class to create disparities

### **Values & the CJS:**

\* Packer (1968): two models of the CJS reflect different value systems: the due process & crime control models

\* The *crime control* model:

- like an “assembly line”
- emphasizes quick & efficient suppression of crime/  
deterrence
- “getting tough on crime”/ jail criminals for long  
periods
- favors mandatory sentences, longer prison terms,  
elimination of  
parole
- view that most arrested are guilty
- much trust placed in decisions of CJS officials:  
make few errors
- support for discretion/ disdain for legal  
technicalities
- little concern for legal rights
- preference to err on the side of societal protection  
instead of  
accused’s legal rights

\* The *due process* model:

- like an “obstacle course”
- emphasizes protection of the legal rights of  
accused
- attempts to ensure that innocent people aren’t  
convicted
- favors limiting discretionary power of CJS officials
- every attempt must be made to treat accused  
fairly/ presume  
innocent
- CJS officials must be constantly monitored re:  
abuse of power
- preference to let factually guilty go free rather  
than abuse rights

\* These models are ideal types, but illustrate different values/ tensions in our system. Emphasis can change over time